

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7581 of 2020

and

WMP.No.8914 of 2020

Dr.Vignesh Sankareswaran,
S/o.Sankaraeswaran.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Director of Medical Education,
Kilpauk, Chennai 600 010.

3.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.

... Respondents.

PRAYER: Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Mandamus directing the respondents to award incentive/weightage marks in favour of the petitioner for the services rendered in Koodankulam Government Hospital, Tirunelveli District from the year 2016 with classification as Difficult Area uptill the year 2018-19 as per G.O.Ms.No.75 Health and Family Welfare Department dated 09.03.2018 and as Rural Area for the year 2019-20 as per G.O.Ms.No.86 Health and Family Welfare Department dated 06.03.2019 for the purpose of incentive marks and consequently grant incentive marks at the rate of 23% (9%+9%+5%) of the marks obtained in NEET-PG-2020 in compliance with Regulation 9(IV) of Medical Council of India Post Graduate Medical Education Regulations, 2000, as amended, for admission to Post Graduate Medical Courses 2020-21 Sessions.

For Petitioner : Mr.G.Sankaran

For Respondents: Mr.Vijay Narayanan, for RR1 & 2.
Advocate General.

Mr.Abdul Saleem, for R3
Special Government Pleader.

O R D E R

This writ petition has been filed for the issuance of writ of mandamus directing the respondents to award incentive/weightage marks in favour of the petitioner as per G.O.Ms.No.75, Health and Family Welfare Department dated 09.03.2018 for the first two years and as per G.O.Ms.No.86, Health and Family Welfare Department dated 06.03.2019, for the third year. Thereby, the petitioner is seeking for incentive marks at the rate of 23% of the marks in the NEET exam.

2.The facts in nut shell is as follows:

The petitioner was serving as a Medical Officer/Assistant Surgeon in Koodankulam Government Hospital, Tirunelveli District, from the year 2016 onwards. The said hospital was falling under the category of Difficult Area as per G.O.Ms.No.75, dated 09.03.2018.

3.The petitioner thereafter wrote the NEET examination and wanted to participate in the selection of Post Graduate Medical Course. However, in the mean time, pursuant to the orders passed by this Court in W.A.No.1051 etc of 2018, dated 17.05.2018, a Committee was appointed under the Chairmanship of Justice A.Selvam. The said Committee undertook the exercise and provided for the marks to be awarded for Difficult Areas, Remote Areas and Rural Areas. Pursuant to the report submitted by the Committee, the Government Hospital, Koodangulam, was brought under Rural Area under G.O.Ms.No.86, dated 06.03.2019. As a result of the same, the petitioner will be entitled for only 5% of marks. The petitioner in the meantime cleared the NEET exam and secured 581 marks. Notification was also issued by the selection Committee on 24.04.2020 for conducting on-line counselling. At this point of time, the petitioner made a representation on 27.04.2020 to the effect that the petitioner will be entitled for 9% marks for the year 2017-19 and 5% marks for the year 2019-20. The petitioner made such a representation on the ground that the Government Hospital, Koodankulam, came under Difficult Area during the period 2016-18 and only subsequently it was brought under the Rural Area. Since his representation was not considered, the present petition has been filed before this Court seeking for appropriate directions.

4.Mr.G.Sankaran, learned counsel appearing on behalf of the petitioner submitted that the Division Bench while passing the order in W.A.No.1051 etc., of 2018 had made it clear that the report of the Committee that was to be constituted after the orders were passed, will only apply for future academic years.

Therefore, the learned counsel submitted that the Government Hospital, Koodankulam, will come under the category of Rural Area only in the year 2019-20 and only for that period 5% of the marks will apply and for the previous two years when this hospital came under Difficult Area, 9% of marks should be awarded for each year. In fine, the learned counsel submitted that the petitioner will be entitled for 23% of marks (9%+9%+5%) as incentive marks and the same has to be awarded to the petitioner at the time of considering his candidature for the Post Graduate Course.

5.Mr.Vijay Narayanan, learned Advocate General, appearing on behalf of the respondents 1 and 2 submitted that after the report was submitted by the Committee headed by Justice A.Selvam and the government order was issued in G.O.Ms.No.86 dated 06.03.2019, the earlier recommendation and the government order got superceded and therefore, the petitioner can be considered only as per the present government order and marks can be awarded by taking note of the fact that the Government Hospital, Koodankulam, falls under the category Rural Area and only 5% marks can be awarded. The learned Advocate General further submitted that the petitioner will be entitled for incentive marks only as per the norms that are available as on the date of the submission of the application. Therefore, the learned Advocate General submitted that the petitioner is not entitled for the incentive marks as claimed by the petitioner.

6.The learned Advocate General concluded his arguments by submitting that if the request made by the petitioner is considered, it will result in the entire rank list redrawn and some of the candidates will be losing their opportunity to get a seat in the Post Graduate Course. In view of such a cascading effect, which could result in conceding to the request made by the petitioner, the relief cannot be granted to the petitioner and he should be considered only as per the norms fixed in G.O.Ms.86 dated 06.03.2019.

7.Mr.Abdul Saleem, the learned Special Government Pleader appearing on behalf of the 3rd respondent adopted the submissions made by the learned Advocate General.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.This Court does not find any serious disputes on the facts of the case and therefore, will directly go into the issue that has to be considered in the present case.

10.The petitioner has cleared the NEET examination and he is entitled to participate in the counseling for the Post

Graduate Course. The petitioner is seeking for incentive marks on the ground that he was working as an Assistant Surgeon at Government Hospital, Koodankulam, from the year 2016 onwards. The Government Hospital, Koodankulam, fell into the category of Difficult Area in the earlier Government Order in G.O.Ms.No.75, dated 09.03.2018. The same is clear from Annexure-II appended to the said Government order. This position continued till the year 2019.

11. In the year 2019, the Government took into consideration the report submitted by the Committee headed by Justice A.Selvam and passed G.O.Ms.86, dated 06.03.2019. As per this G.O., Government Hospital, Koodankulam, came under the category of Rural Area. As per G.O.Ms.86, 5% incentive marks can be awarded where the hospital falls under the category of Rural Area.

12. It is clear from the order passed by the Division Bench in W.A.No.1051 etc., of 2018 that the identification of categorization of all those institutions/hospital falling under the category of A(1) and A(2) was upheld. For proper appreciation, Paragraph 29 of the order is extracted hereunder:

"29. At the same time, we are, however of the view that the reasoning which went into the identification of categorization of A(1) and A(2) cannot per se be held to be completely extraneous or basically erroneous so as to be underserving for any acceptance in terms of the proviso to sub-clause IV of Regulation 9 of the Regulations, 2000. Moreover, as rightly contended by the Additional Advocate General, when a Committee of experts had recommended on the basis of deliberations and such recommendations unless the same are found to be extremely blatant, unreasonable or manifestly arbitrary and unduly favouring one class of incumbents/doctors who are not entitled to such preferential right, the Court should be wary of substituting its views in the place of the recommendations of the expert committee. Therefore, we hold that inasmuch as the categorization of A(1) and A(2) does not suffer from any legal or factual infirmity on its whole, the same cannot be invalidated."

13. It is clear from the above that the Government Hospital, Koodankulam, falling under the category of Difficult Area in G.O.Ms.No.75, dated 09.03.2018 had been upheld.

14. While the Division Bench gave further directions, Paragraph 39 of the order makes it clear that the other recommendations made by the Committee that is to be constituted,

will be taken into consideration for future academic year in respect of admission to the Post Graduate Courses. Pursuant to the recommendations given by the Committee, G.O.Ms.86, dated 06.03.2019 came into force and from 2019 onwards, Government Hospital, Koodankulam came within the category of Rural Area.

15.The above Government Order cannot whittle away the fact that the concerned hospital was well within the Difficult Area during the years 2017-18 and 2018-19. That being so, the petitioner will be entitled for 9% of marks as incentive marks under the later G.O. Insofar as 2019-20 is concerned, the hospital has come into the category of a Rural Area and therefore, the petitioner will be entitled only for 5% incentive marks under the later G.O.

16.This Court is not in agreement with the stand taken by the respondents to the effect that even for the earlier years viz., 2017-2018 and 2018-2019, the petitioner is entitled only for 5% of incentive mark. The Government Order cannot be given a retrospective effect and thereby take away the status given to the Government Hospital, Koodankulam as the one coming under difficult area. That apart, this Government Order can only have a prospective effect from the date on which it came into effect.

17. In view of the above discussion, this Court is inclined to uphold the contention put forth by the learned counsel for the petitioner and this Court holds that the petitioner will be entitled for 23% (9%+9%+5%) marks as incentive marks. This should be taken into consideration at the time, when the petitioner participates in the counselling for the P.G. Course conducted by the third respondent.

18.This writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

rm
To

1.The Principal Secretary to Government,
Health and Family Welfare Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Director of Medical Education,
Kilpauk, Chennai 600 010.

3.The Secretary,
Selection Committee,
Directorate of Medical Education,
Kilpauk, Chennai 600 010.

W.P.No.7581 of 2020
and
WMP.No.8914 of 2020

SKS (CO)
SP(08/10/2020)



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